IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.1509 OF 1991

1. Bhikulal Ramprasad Dudhawat (Agarwal))
2. Shantilal Ramprasad (Agarwal))
3. Andilal Dagdulal (Agarwal))
4. Ramchandra Dagdulal (Agarwal))
5. Raju alias Rajendra Radhakisan Agarwal,)
6. Mohanlal Radhakisan (Agarwal))
7. Sureshchandra Dagdulal Agarwal,)
All residing at and post Malegaon, District - Nasik.).. Petitioners

Vs.

1. State of Maharashtra, (Notice be served upon Additional Government Pleader, High Court, Bombay.))
2. Sub.Divisional Officer, Malegaon Sub.Division, Malegaon, District Nasik.)
3. The Tahsildar, Malegaon, District Nasik.).. Respondents

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Ms A.R.S.Baxi for the Petitioners.

Shri C.R.Sonawane, AGP for the Respondents.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 29TH SEPTEMBER, 2006

ORAL JUDGMENT:

1. Heard. The petitioners' land bearing Survey

No.301B (C.T.S.No.1107 - Final Plot No.79) situated within the limits of Malegaon Municipal Council came to be converted for non-agricultural use in the year 1939. The total area of the said land was 81 Ares. In the year 1978, a part of the said land was sought to be appropriated for the purpose of road widening, and in the process, an area of 20 Ares or thereabout was utilised for the same, leaving behind the area of 50.71 Ares to the petitioners.

2. The respondent No.1 under a Circular dated 10th May, 1979 issued under the Maharashtra Land revenue Code (Amendment) Act, 1979 inter alia revised the standard rate of non agricultural assessment to be estimated on the basis of sale statistics etc. It also provided that the assessment was not to exceed two times the previous non agricultural assessment in case where the land was used for the residential purposes and six times if the same was used for any other non agricultural purposes. Further, under the Circular dated 8th May, 1981, it was clarified that the revised non-agricultural assessment would be recovered from 1st August, 1979.

3. Three notices came to be issued to the petitioners on 14th April, 1982, 3rd June, 1982 and

8th August, 1982 by the Tahsildar of Malegaon calling upon the petitioners to pay various amounts of non agricultural assessment in relation to the said property. The petitioners preferred the Revision/Appeal to the Additional Commissioner, Nashik Division, Nashik, and by order dated 31st October, 1988, the Additional commissioner remanded the matter to the Tahsildar for reconsideration thereof. The petitioner had also filed Regular Civil Suit No.479 of 1983 challenging the increase in the non agricultural assessment which was subsequently withdrawn after filing the present petition.

4. According to the petitioners, before revising the rates of non-agricultural assessment, the authorities have not complied with certain obligations enumerated under the Maharashtra Land Revenue Code and in particular, the Sections 111, 112, 113 and 116 thereof which the respondents failed to comply with. The main grievance of the petitioners relates to the attempt on the part of the respondents to give retrospective effect to such assessment and secondly for failure on the part of the authorities to consider reduction in the area of the petitioners' plot consequent to the appropriation of the land of about 20 Ares for road widening while carrying out

re-assessment for the purpose of payment of non-agricultural assessment.

5. The learned advocate for the petitioners has also drawn the attention to the decision of the Division Bench in the matter of **State of Maharashtra & Ors. v. Nirlon Synthetic Fibres & Chemicals Ltd. & Anr.**, reported in 1992 Mh.L.J. 1327. The Division Bench therein had clearly held that in cases where the authorities undertake revision of rates of non-agricultural assessment, till the necessary exercise in that regard is complete, the rate fixed earlier shall continue to remain in operation and the revised rate can come into force only from the date of the publication of the notification. Plain reading of the impugned notices nowhere discloses the authorities having applied their mind to the said aspect as also to the aspect whether the claim for assessment can be made for the period prior to its demand.

6. The learned AGP considering the law laid down by the Division Bench of this Court in **Nirlon Synthetic Fibres and Chemicals Ltd.'s case (supra)** has fairly submitted that the matter would be required to be reconsidered by the concerned authorities.

7. As the impugned notices nowhere disclose proper application of mind to the aspect as to whether the demand could be retrospectively made or not, nor it appears to have taken into consideration the fact that the 20 Ares of the land of the petitioners was already appropriated for the purpose of road widening, the authorities cannot be allowed to proceed on the basis of the said notices to enforce liability sought to be attached to the petitioners under the said notices. The respondents are required to hear the petitioners and to take appropriate steps bearing in mind the fact that the area of 20 Ares of the petitioners' land has already been appropriated for the road widening and further to consider the provisions of law while fixing the cut-off date to claim revisional rate of non-agricultural assessment as also to consider whether the demand can be sustained for the period prior to the issuance of the notices. The same shall be decided bearing in mind the law applicable to such cases. The concerned authority having not done the said exercise and without considering the same having issued the impugned notices, the same are liable to be quashed and set aside and the matter is to be remanded to the concerned authority to consider all these aspects prior to issuance of the notices and to consider the

same in accordance with the provisions of law and to take appropriate steps as are permissible under the law.

8. The petition, therefore, succeeds. The impugned notices are hereby quashed and set aside. The matter is remanded to the concerned authority to consider all the aforesaid aspects prior to issuance of the notices and to consider the same in accordance with the provisions of law and to take appropriate steps as are permissible under the law. The rule is made absolute in above terms with no order as to costs.

(R.M.S.KHANDEPARKAR, J)